AMERICAN CHEMISTRY COUNCIL STATE & LOCAL PUBLIC AFFAIRS

FACSIMILE TRANSMITTAL SHEET	
TO:	FROM:
Michael Leaon	Tim Shestek Director, State & Local Public Affairs
CIWMB	DATE: 1/21/2005
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PHONE NUMBER:	SENDER'S REPERENCE NUMBER:
RE:	YOUR REFERENCE NUMBER:
□urgent □for review	☐ PLEASE COMMENT ☐ PLEASE REPLY ☐ PLEASE RECYCLE
NOTES/COMMENTS:	

January 21, 2005



Mr. Michael Leaon California Integrated Waste Management Board 1001 I Street P.O. Box 4025 Sacramento, California 95812-4025

Dear Mr. Leaon:

On behalf of the member companies of the American Plastics Council – a part of the American Chemistry Council - I appreciate the opportunity to provide the following comments relative to the December 17 version of the "Comprehensive Film Plastic Diversion and Management Action Plan and Plastic Trash Bag Program – Report to the Legislature."

General Comments

- In prior testimony filed with the California Integrated Waste Management Board (CIWMB) on this topic, APC has consistently supported the "CIWMB's goal to identify and implement feasible solutions to increasing the diversion of plastic film from disposal," provided that such policies are both "environmentally responsible and economically sustainable."
- We remain committed to actively participating in the on-going dialogue to identify
 reasonable policies to achieve the increased diversion of plastic film products from
 disposal and believe that the general tone of this latest version is complementary to
 our position. We applaud the CIWMB staff for moving this dialogue to a position
 that supports further collaboration between the public and private sector.

Comments on Suggested Policy Recommendations

The recommendation to "negotiate and execute Memoranda of Understanding (MOU) with film plastic industry stakeholders..." and "establish film plastic diversion goals and targets for 2008" is clearly a step in the right direction. At a minimum this process affords all stakeholders the opportunity to participate in developing reasonable and cost-effective solutions. Nevertheless, before the CIWMB moves to enact statutory changes to implement the MOU process, additional outreach to potentially affected stakeholders – both in the public and private sector – is essential.

The American Plastics Council (APC) – a part of the American Chemistry Council (ACC) - is a major trade association for the United States plastics industry. APC advocates unlimited opportunities for plastics and promotes their economic, environmental and societal benefits. APC also includes five business - Alliance for the Polyurethanes Industry (API), Polycarbonate Business Unit, Polystyrene Packaging Council (PSPC), Expandable Polystyrene Resin Suppliers Council (ERSC), Rigid Plastic Packaging Institute (RPPI), and The Vinyl Institute (VI).



The MOU concept was only released in mid-December 2004 and only one public meeting was held to review and discuss this concept. Participation at this meeting was limited to only a few stakeholders. We suggest that the CIWMB hold additional stakeholder workshops, perhaps in southern, central and northern California, to solicit input from local government officials, agricultural interests, retailers, grocers, shopping center interests, recyclers, consumers and other interested parties before finalizing this concept.

- Though a framework is being established to create a collaborative process, the timelines initially suggested for negotiating the MOUs and meeting targeted goals appears to be overly optimistic. The likely action items that might stem from a negotiated MOU (e.g. identifying various stakeholders, outlining possible policy options, creating new collection programs, constructing new infrastructure, instituting public education programs to promote existing programs, etc.) are likely to take much longer than the two years that is provided. We suggest that the timeframe for negotiating the MOUs and subsequent dates by which to benchmark the "success or failure" of any waste diversion targets be extended to perhaps 2008 and 2010 respectively.
- The CIWMB staff must continue to recognize the diversity of the plastic film market
 when it enters into the MOU negotiation process. Reasonable solutions to increasing
 the diversion of plastic grocery bags are likely to be much different than those that are
 identified for increasing the recovery of plastic film used in agriculture.
- The draft report makes reference to the fact that the MOU process is similar to a process that "has been used for the carpet and paint industries." Such an "apples to apples" comparison cannot be made. The marketplace for carpet and paint is much different than plastic film and therefore, realistic diversion goals for one maybe much different than the other. For example, consumers and retailers have a finite number of transactions relating to the procurement of carpet, or even paint, and the recovery potential is likely greater due to the concentration and volume (weight) of the product on a per transaction basis. In addition, there is usually a discussion between a retailer and consumer that accompanies each transaction and provides a basis for "intervention" to discuss possible product discard activities.

It is also our understanding that despite several years of negotiations, an MOU with the paint industry has not yet been finalized. These and other differences should be considered before the report makes general comparison statements.

• The draft report also recommends the enactment of a "mil fee" to support the increased "collection, diversion, recovery, recycling, cleaning and reprocessing of film plastic products..." and that the Board estimates "that the fee would be between 0.4 cents to 1 cent per pound." Such a fee would be instituted if the MOUs cannot be negotiated or if established diversion targets are not met. Suggesting that a mil fee is necessary and estimating what the amount of such a fee is premature, especially since

the MOU process has yet to begin and no possible action items for increasing the diversion of this material have been formally identified.

In addition, the "mil fee" concept seems to suggest that the primary barrier to increased film recovery is cost. However, the CIWMB should recognize that the increased costs associated with expanded recovery correlates highly with the cost and consumption of resources. To collect and mechanically process plastic film that is currently too dispersed or too contaminated will require the net positive consumption of energy, water and other natural resources when compared to the virgin alternative.

The notion that a new fee program looms in the not-to-distant future sends the wrong message to those in the business community that California is a business-friendly state. As we have stated in previous comments, millions of dollars in new fees have been imposed on manufacturers in the past several years in order to raise new revenue aimed at addressing the state's budget shortfall. Finally, questions about how to impose a fee on those products imported into California from outside the U.S. should be fully vetted before the CIWMB seeks legislative authority to impose such a financial burden.

- The draft report suggests that enforcement of the current Plastic Trash Bag Program be suspended and then ultimately repealed "if a mil fee is assessed in either 2007 or 2009." Why should it only be repealed if a mil fee is assessed? There does not appear to be any correlation between repealing the Plastic Trash Bag Program and the enactment of a new fee. The often cited Plastics White Paper concluded the following about the Plastic Trash Bag Program:
 - "The law [Plastic Trash Bag Law] is currently obsolete, given the present secondary market demand for plastic film by makers of composite lumber."
 - "The Plastics Trash Bag Law has a minimal impact on polyethylene diversion, which has effective markets in the domestic composite lumber and export markets."
 - "The law has shown the difficulty of attempting to micro-manage plastics markets via minimum content requirements over a period of time."

The CIWMB should repeal the Plastic Trash Bag Program and reassign staff and financial resources to other plastic activities.

• The draft report also recommends that "biodegradable" plastic film be exempt from the mil fee and any diversion mandates. While the advent of bio-based products continues to evolve, the report should make a strong statement that bio-based products are a significant contaminant for reclaimers of polyethylene based film products. Great care should be exercised to prevent the contamination of existing recycling programs and markets. Furthermore, care should be exercised to ensure that "biodegradable" products are not falsely promoted as the panacea for the state's marine debris and litter challenges.

Thank you for the opportunity to provide these comments. I look forward to continuing to work with the CIWMB and staff on these and other important public policy issues. Should you have any questions or comments, please do not hesitate to contact me at 916-448-2581 or via email at tim_shestek@americanchemistry.com.

Sincerely

Tim Shestek

Director, State & Local Public Affairs

American Chemistry Council

cc:

Ms. Rosario Marin, Chair, CIWMB

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